

DARLENE E. GOTTSTINE
Claimant

JR CUSTOM METAL PRODUCTS, INC.
Respondent

REPUBLIC INDEMNITY COMPANY
Insurance Carrier

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Docket No. 1,026,450

Respondent appeals the March 20, 2006 preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes. Claimant was awarded medical treatment and temporary total disability benefits (TTD) for the September 7, 2005 slip and fall.

Did claimant suffer accidental injury arising out of and in the course of her employment with respondent?

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant, a buyer for respondent, was walking in respondent's hall when her left foot slipped out from under her and she fell. There is no indication that there was any foreign substance on either the floor or claimant's shoe. Respondent argues claimant's activity of walking is an activity of daily living, citing K.S.A. 2005 Supp. 44-508(e), and, therefore, not compensable. That statute, in defining "personal injury" or "injury," specifically excludes disabilities resulting from "the normal activities of day-to-day living". The Board agrees that the legislature has added that exclusionary language. However, the Board does not consider the act of slipping as an activity of day-to-day living, as suggested by respondent.

Respondent argues claimant should be denied benefits after suffering an unexplained fall. However, this is not a situation where claimant suffered from an idiopathic condition as in *Bennett*,¹ where the claimant suffered from epileptic seizures and blackouts, nor a preexisting back condition as in *Martin*² or *Anderson*.³ Those cases, presented by respondent in its brief to the Board, are distinguishable from a simple unexplained fall. The Board finds no reason in this case to vary from its past practice of finding unexplained falls as compensable under the Kansas Workers Compensation Act.⁴

The Kansas legislature has clearly expressed an intent to liberally construe the Act for the purpose of bringing employers and employees within the provisions of the Act to provide the protections of the Workers Compensation Act to both.⁵ An award of benefits herein supports that legislative intent.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated March 20, 2006, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May, 2006.

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Douglas C. Hobbs, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

¹ *Bennett v. Wichita Fence Co.*, 16 Kan. App. 2d 458, 824 P.2d 1001 (1992).

² *Martin v. U.S.D.* No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980).

³ *Anderson v. Scarlett Auto Interiors*, 31 Kan. App. 2d 5, 61 P.3d 81 (2002).

⁴ *Davis v. Montgomery Ward*, No. 220,775, 1997 WL 637780 (Kan. WCAB Sept. 11, 1997); *Toumi v. Senne & Company, Inc.*, No. 237,798, 1999 WL 55385 (Kan. WCAB, Jan. 26, 1999); 1 *Larson's Workers' Compensation Law* § 7.04 (2005).

⁵ K.S.A. 2005 Supp. 44-501(g).